

R. RUSH.

[To accompany bill H. R. No. 479.]

JUNE 8, 1842.

Mr. HUBARD, from the Committee of Claims, submitted the following

### REPORT:

*The Committee of Claims, to whom was referred the memorial of Richard Rush, having duly considered the same, beg leave to make the following report:*

The papers filed in this case show that Richard Rush was appointed, in the year 1836, by the President, in pursuance of an act of Congress passed the 1st of July, 1836, the agent of the United States to "*assert and prosecute*" their claim to the legacy bequeathed to them for certain specified purposes by James Smithson, late of London, deceased. Shortly after his appointment he proceeded to London, and, after indefatigable exertions, had the good fortune to gain the suit, and receive the amount due the United States. The main design of his agency was thus far successfully attained. But, as the funds had been paid over to him by an order of the court, the further duty remained of transmitting them into the Treasury of the United States. From the terms used in the letter of instructions, it is obvious that Mr. Rush was deputed as a *prosecuting* attorney. This office he most faithfully and judiciously discharged. Having received the funds, a difficulty arose in his mind whether he should best comply with the spirit and intention of his agency by paying over the funds received to the bankers of the United States in London, to be by them transmitted to the Treasury of the United States, or by taking upon himself the great risk, responsibility, and labor of disposing of the various stocks embraced in the funds, and of conveying the cash, under his immediate care and supervision, from London to the mint at Philadelphia.

As the agent to "*assert and prosecute*," Mr. Rush had ably and fully performed his duty when he recovered the suit, and had received the funds bequeathed for specified purposes by James Smithson, deceased, late of London, to the United States. For this purpose he was sent abroad; and, while thus engaged, he was allowed a fixed compensation of three thousand dollars (\$3,000) per annum for his personal services, and two thousand dollars (\$2,000) per annum for all contingencies except the law expenses. Up to this point, there is no difficulty. But, having received the funds bequeathed the United States by James Smithson, he was required, by his letter of instructions, "*faithfully to remit them to the United States Treasury*." Upon a careful examination, no instruction is found giving him specific directions as to whom the funds should

be remitted by ; nor, on the other hand, is there any evidence or reason given to justify the inference that the agent appointed to "assert and prosecute" the Smithsonian claim was himself required, in event of his being successful, to take charge of the funds so recovered, *sell* the stocks, and *convey* their proceeds, in person, from London to the United States Treasury. So, therefore, it seems fair to infer that the agent was clothed with full and ample discretionary power to select the person or persons, body corporate or other banking institution, by or through which he would make the "*remittance*." All that he was bound and required to do in that particular event was to take proper steps for the "faithful remittance to the Treasury of the United States of such sum or sums of money, or other funds, as he might receive in virtue of said bequest." Thus viewing his authority, and from a high sense of duty, Mr. Rush very properly considered the peculiar circumstances of his mission, as well as the nature of the important trust imposed upon him, and, as the result proved, wisely determined to incur all the risk and labor of effecting the sales of the stock, and bringing over the money himself, rather than turn over the funds to a mercantile or banking house, to be by them transmitted, in specie, to this Government. Such were the great and heavy responsibilities consequent to effecting a sale and transfer of the money to this country without diminishing the amount of the sum bequeathed, that the agent might naturally and reasonably have expected that any one rendering this valuable service would be entitled to and receive a just and fair remuneration at the hands of this Government. Indeed, no one, at all conversant with the usages of banking and mercantile houses, could have supposed that so important and weighty a task would have been performed without the understanding that the usual commissions would be both charged and allowed. We have the authority of gentlemen of the highest standing for believing that, had Mr. Rush paid over the fund he received to the bankers of the United States in London, to be by them transmitted to the Treasury of this Government, the *charges* for their *services* alone would have amounted to a commission of at least *two or two and a half per cent.* on the gross amount of the fund. Certainly, as the agent of this Government, under the peculiar circumstances of the case, Mr. Rush acted judiciously when he took the best course to have the funds transferred with safety and at the least expense to the country. The result proves that the means used were adequate to the end ; and a comparison of the rates at which others would have performed the same duties and encountered the same responsibilities, with the prices charged by Mr. Rush, will satisfy any candid mind that he conducted the whole business in a manner creditable to himself and profitable to the Government.

Having established that Mr. Rush was appointed to "assert and prosecute the Smithsonian claim," and that he was not *bound* or *required* to *sell* the stock and *bring* the cash over to this country in person, but that he had permission to turn the same over to some suitable mercantile or banking house, to be by them transmitted, the question arises whether, when, in the exercise of a wise and sound discretion, he has faithfully and at rates lower than others would have demanded, had they been called on to render like duties, performed valuable public services, he shall be compensated. The only difficulties in the way of an affirmative answer seem to be, whether these were *extra* services ; and, if so, whether he has been paid. A negative answer to the latter branch of the last question is read-

ily accorded, and the former portion may, with the same confidence, be affirmed, as resulting from the nature of the diversified and onerous duties devolved upon him by the successful carrying out of the letter of his instructions, as the agent deputed to "assert, prosecute, and remit to the Treasury of the United States, the amount of the Smithsonian bequest when recovered." Had Mr. Rush, after receiving the funds, employed a banker to transmit them, there could be no question about the obligation of the Government to pay a reasonable and just commission. Does the fact of his preferring to perform the service himself, and assuming all the trouble, risk, and labor to further the safe and speedy delivery of the money into the United States Treasury, make it *less* incumbent on the Government to pay for such services, acknowledged, too, to have been faithfully and most judiciously rendered? Common sense and even-handed justice both respond in the negative. The fact of Colonel Aspinwall's account for services rendered in effecting the sale of the stock being allowed and paid, is conclusive as to the justice as well as the obligation of the Government to pay Mr. Rush for the *extra* services he performed while aiding Colonel Aspinwall in making the sales, and finally in bringing and delivering the money into the mint at Philadelphia. As this is a novel and unprecedented agency, the equity and justice of this claim for extra services has to stand pretty much upon its own merits. However, while we readily admit in the main that this is a case "*sui generis*," yet we are not without precedents to sanction the principles upon which the memorialist rests his claim. In citing a few instances in support of this claim from the vast number granting *extra* allowances, the committee make the allusion more because usage seems to require some support of this kind than from a conviction that they can find any exactly parallel. But, nevertheless, the principles involved in this claim for extra compensation are believed to be fully sustained by the decision in the case of the United States against Fillebrown, 7th volume of Peter's Reports, page 28; also in Gilpin's reports of cases in the district court of the United States for the eastern district of Pennsylvania, case of Armstrong *vs.* the United States, page 399.

As this is a case of no little novelty and of general interest, it is due both to Mr. Rush and to the country that all the material facts should be spread before the public. A knowledge of the facts and a just appreciation of the testimony will best guaranty a wise decision. Preferring, therefore, a plain and concise statement of the main points, accompanied with the material facts and testimony to support them, to an elaborate argument, the committee indulge the hope that a perusal of the annexed letters will supersede the necessity of any further comments on their part in support of the conclusions to which they have arrived; and being, upon a full examination of the subject, convinced of the justness of the claim for *extra* compensation, they respectfully beg leave to report a bill.

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*Mr. Forsyth to Mr. Rush.*

DEPARTMENT OF STATE, July 11, 1836.

SIR: I have the honor to inform you that the President, in pursuance of an act of Congress, passed at their recent session, has been pleased to

appoint you the agent of the United States [to assert and prosecute] their claim to the legacy bequeathed to them by James Smithson, late of London, deceased. Your power of attorney or commission is herewith remitted, with an authenticated copy of the act referred to annexed to it. It is the wish of the President that you should, in the event of your acceptance of this trust, embark for London without unnecessary loss of time, to enter on the duties of the appointment. Previously to leaving the United States, however, it will be necessary, in compliance with the provisions of the accompanying act of Congress, to execute to, and deposite with, the Secretary of the Treasury, with good and sufficient securities, to his satisfaction, a bond or bonds, in the penal sum of \$500,000, for the proper performance of those duties, and for the [faithful remittance] to the Treasury of the United States of such sum or sums of money, or other funds, as you may receive in virtue of said bequest.

The compensation to be allowed you for your services in this capacity will be at the rate of \$3,000 per annum for your personal services, and at the rate of \$2,000 for all contingencies except the law expenses. Compensation to begin from the day you report yourself ready to enter on the duties of the office. An account of the law expenses, with vouchers, will be required.

A letter of credit on M. de Rothschild, the banker of the United States at London, authorizing him to pay your drafts for compensation, and for the necessary expenses actually incurred in the [prosecution] of this claim, is also enclosed, limited to \$10,000, being the whole amount appropriated by Congress for that object.

I am, sir, your obedient servant,

JOHN FORSYTH.

RICHARD RUSH, Esq., &c.

*Extract of a letter from R. Rush to J. Forsyth, Secretary of State, dated*

LONDON, June 5, 1838.

SIR: With all my exertions to have the forms necessary for putting me in possession of the Smithsonian fund completed in May, it will be seen, from the enclosed copy of a letter to me from the solicitors, in reply to one I wrote them on the last of May, (a copy of which is also enclosed,) that it is only to-day that all the forms have been finally and fully completed.

After getting this information, I went immediately to the proper department of the accountant general of the court of chancery at the Bank of England, and find that there has been transferred to me the following stock. viz:

1. Sixty-four thousand five hundred and thirty-five pounds eighteen shillings and nine pence in the consolidated three per cent. annuities, commonly called consols, by abbreviation.

2. Twelve thousand pounds in reduced three per cent. annuities.

3. Sixteen thousand one hundred pounds in bank stock.

The books at the bank show the above stock to have been regularly transferred to me under the authority of the court of chancery, by the accountant general, as the proper officer of the court, in virtue of the decree reported in my last; and I have accepted the same on the books, on be-



half of the United States, by signing my name to a form of acceptance drawn out under each transfer.

The above stock constitutes, with the exception of five thousand and fifteen pounds, the whole property left by Mr. Smithson to the United States, and now recovered for them, with the further exception of some small sum in cash, to which the solicitors refer as still to come from the accountant general, but of which I have as yet no statement.

The sum of five thousand and fifteen pounds in consols, it has been decreed by the court, is to be reserved and set apart to answer the annuity payable to Madame la Batut; the principal to revert to the United States on the death of the annuitant.

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*Extract of a letter from Richard Rush to John Forsyth, Secretary of State, dated*

LONDON, June 13, 1838.

In the important operations of selling the stock, I am receiving the most beneficial aid from the constant advice and active daily co-operation in all ways of our consul, Colonel Aspinwall, whose long residence in London and ample opportunities of knowing the mysteries of its great stock market, and the minute details of doing business in it, have given him the ability to aid me. It is thus that I am selling to every advantage.

None of the three per cent. reduced annuities have yet been sold. We are watching the market with a view to the most favorable moment for disposing of this part of the stock.

The fortunate point of time was hit for selling out the consols. They have now sunk a little, and, with the exception of momentary intervals, would not have brought as much since the sixth instant as I obtained.

From the sales made, it is now I think certain that the whole stock will yield from one hundred and three to one hundred and five thousand pounds, apart from the five thousand and fifteen to be retained here during the life of Madame la Batut.

From the successful manner in which they are proceeding, it seems clear, also, at the present time, that the fund, independent of the accumulations of interest, will be richer in the state in which I shall deliver it over to the United States than it was in the summer of 1835, when their right to it first attached by the death of Henry James Hungerford.

Left to myself to make the most of the fund, after recovering it from chancery, which depended so much on the sale of the stock, it has not been without full consideration that I did not call on the Messrs. Rothschild to sell it all, for which their experience and situation here, besides being the bankers of the United States, might have seemed to point them out. But, first, they would, I take for granted, have charged a commission of one per cent., to which I could not have objected, as it is allowed here, apart from the broker's commission, and by the chamber of commerce at New York on effecting sales of stock; whilst Colonel Aspinwall charges me no such commission, and I much desired to save the amount of it to the fund, if, with his efficient aid, I could conduct the sales confidently and advantageously myself. But, secondly, if the former, as the bankers of the United States, would have performed the task with-

out charge, I should not have been the less disinclined to place it in their hands, having had no instructions to do so, and, being without these, I could only exercise my best discretion.

*Extract of a letter from Richard Rush to John Forsyth, Secretary of State, dated*

WASHINGTON, September 15, 1838.

After I had finally recovered the legacy from the court of chancery, it did not seem to me prudent that I should, by myself alone, undertake the sales of the stock awarded, and delivered to me by its decree, any more than the shipment of the gold, into which the money was afterwards to be converted; these ulterior operations being usually conducted through mercantile agencies, and being of a nature not to be advantageously, if safely, conducted without them. Feeling inadequate, in my own person merely, to the management of such operations, my first intention was that the sales of the stock, as a highly important part of them, should be put under the direction of some experienced mercantile or banking house in London, familiar with the modes of doing business on its great stock exchange, and self-confident in the measures to be taken. But I found that to put this operation into such hands would incur a commission of one per cent. on the entire fund, as mentioned in my No. 27, in addition to brokerage and other charges, such as the expenses on transfers and stamps; besides that, I should have had to part with the possession of the stock to such mercantile or banking house whilst the sales were going on. I was also given to understand that this latter step would probably lay a foundation for a further mercantile commission on receiving and paying.

Weighing all these circumstances, I came to the conclusion to keep the operation of selling the stock in my own hands. Nevertheless, I felt, as already intimated, that I could conduct it with neither skill nor safety unless under the counsel and co-operation of a person well informed in these matters, and trustworthy. To the consul of the United States in London I applied as to such a person, and received from him, as my No. 27 informed you, this aid and co-operation, in the fullest and most efficient manner, daily, throughout the months of June and July, until all the sales were effected; and effected, I may be allowed to add, with favorable results not to have been surpassed, as I have already reported to you, and as the public records of the London stock market on each of the days that I sold will attest. Into his hands I also put the other mercantile business necessary to the shipment of the gold. These included the obtaining, verifying, arranging, packing, and securing it for shipment, contracting for freight, entering and clearing at the custom-house, effecting insurance, (which was done at five principal offices and with thirty-two private underwriters,) and, finally, shipping the gold. For these services, of whatever kind, (and I had many incidental ones from him, not here enumerated,) I allowed and paid him a commission of three-fourths of one per cent., which amounted to £797 15s. 6d.

I speak from good information when expressing a belief that an equal amount of assistance and services to me, under all the heads rendered,

could not have been commanded through the usual agency of banking and commercial houses, on so heavy and responsible a moneyed operation, at a less charge to the fund than a commission of from two to two and a half per cent. on the whole amount of it; and that this falls below rather than goes beyond what it might be expected to have been.

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*Extract of a letter from Levi Woodbury, Secretary of the Treasury, to the President of the United States, dated*

TREASURY DEPARTMENT, December 3, 1838.

The amount received in London by the agent of the United States, under the decree of the court of chancery of England, was the gross sum of £106,490 11s. 9d., including the sum of £116 2s. 2d. for costs refunded. This was reduced, by the payment of commissions, insurances, &c., to the sum of £104,960 8s. 9d., which was brought into the United States in gold, and produced at the mint the sum of \$508,318 46, before mentioned.

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*Mr. Rush to Mr. Webster.*

SYDENHAM, NEAR PHILADELPHIA,

February, 1842.

SIR: I beg leave to enclose to you an account against the United States for extra services as their agent for recovering the Smithsonian legacy, under the act of Congress of the 1st of July, 1836, and respectfully to accompany it with the following explanations:

I believe it not to have been the meaning of the above act, or my instructions under it of the 11th of July, 1836, from Mr. Secretary Forsyth, on file in your Department, that I should do more than assert and prosecute the right of the United States to this legacy before the proper tribunals of England, give acquittances for all the money or other funds adjudged to them on account of it, and faithfully pay over the same for their use.

Hence, if, after the final decree of the court of chancery awarding the legacy to the United States, and directing it to be paid to me, I had called upon banking or mercantile houses in London for subsequent services, mercantile in their nature, yet indispensable for effecting sales of the multifarious English stocks in which the legacy stood when the testator died, and when it was recovered, and for transmuting the whole proceeds into specie for due and regular shipment and transportation to the United States, paying to such banking or mercantile houses the commissions usual and just on such business operations, I believe that I should have been warranted by the law and instructions under which I acted; nor have I ever heard this interpretation of either called in question.

If I had simply remitted these multifarious English stocks to the Treasurer of the United States by any legal modes of transfer, it might be said, perhaps, that it would have fulfilled the closing part of my duty in the agency, the stocks having been the *funds* (this is the alternative word used in the act) *specifically adjudged to the United States*, as constituting the main portion of the legacy—just as I brought over and delivered to

their order in New York certain "boxes and packages" also specifically adjudged to them as very small parts of it. But this would obviously have been an objectionable mode of proceeding; and as to *money*, I received none worth speaking of by the mere decree of the court.

My official letters to your Department, after I had obtained the solemn and favorable decree of the court, will, therefore, show that I took upon myself the subsequent services of selling these multifarious stocks, their sale being indispensable, and obtaining and shipping the specie; and, with the aid of Colonel Aspinwall, our consul, not as such, for I had no right whatever to call upon him in that capacity, but only as a trustworthy, experienced, and capable person, performed them all in London, he acting under my directions and on my responsibility. For all the details of this, I beg leave to refer to my letters from number twenty-five to thirty-four, inclusive, but especially to thirty-four and twenty-seven. All were published in document No. 10 of the House of Representatives, *Executive*, 25th Congress, 3d session, should that be found a more convenient mode of referring to them.

That these subsequent services, as they are specified in my account, were performed to public advantage, I presume to state, because the very highest prices were obtained for an amount of stock exceeding one hundred thousand pounds sterling. This the records of the London stock market will attest; and that, by keeping all the operations of selling and transferring the stock in my own hands, as well as all the other operations that followed, expense was saved to the United States, which mercantile agencies for all would have incurred in commissions to an amount of two per cent. at the least on the entire gross operation, I can state as confidently. On this head I beg leave, with great deference, to refer to what is said in my letters No. 34 and No. 27, (pages 23, 14 and 15 of the public document cited,) but still more to your own ample knowledge.

All my accounts growing out of this trust were settled at the Treasury immediately after my return, without demur to any single item, including one of £797 15s. 6d., as a commission of three quarters of one per cent. on £104,960, that I paid to Colonel Aspinwall for his most useful assistance; and the then head of that Department was pleased to signify, in a letter to me, his sense of the "extraordinary promptitude and economy" with which I had completed the trust.

That it was my duty, and nothing more than my duty, to obtain this fund for the United States in the shortest time and most economical manner possible, by exerting myself to the utmost in all ways marked out by the law and my instructions, taking not merely their words, but fair spirit, as my guide, I am aware: and for whatever of service I may have rendered within these limits, by a close attendance upon the courts during the whole time of the agency, that no chance might be missed of urging on the suit, through a moment's absence on my part; by a constant and vigilant control over all the legal expenses, throughout their many ramifications, under systems so full of complication as those of the English chancery are known to be; by the decisions taken on my own responsibility to terminate the suit, when I saw that the gross sum was safe, without prolonging the agency, or risking the issue for fractional interests—for all the saving of time and money that I may have effected to the United States in these ways, or others, enjoined by fidelity, in its broadest sense, to the trust they



had confided to me, I claim no merit; and the compensation mentioned in my instructions was fixed for all such services.

But, with great submission, I apprehend that the services stated in my account were altogether extra, and cannot, by any reasonable intendment, be made to attach to the legal trust agency confided to me. They are not in my instructions, which specify duties that fall short of them, and in words that cannot cover them, any more than those of the act of Congress. They carried me into a totally distinct line of active duty, based upon the recovery of the legacy funds, which I had fully completed, but could not, with any propriety, remit to the Treasurer of the United States in the form in which the court delivered them into my possession; and I therefore respectfully submit that the time and labor I employed upon these services, throughout a period considerably prolonged beyond the regular termination of the agency, justly entitle me to other and equivalent remuneration, to be measured both by the value of the services to the United States, and by my own time and labor devoted to the performance of them.

In charging, as this remuneration, a commission of three quarters of one per cent. on the same sum on which it was allowed to Colonel Aspinwall, and sanctioned by the Government, who, though acting so usefully as my assistant, acted as my secondary, as the very terms of his account (page 58 of the public document) make known, taking from me those directions which could only have been given to him on mature deliberation, and under every anxious solicitude and responsibility on my part, I venture to think that I take a standard for my charge so entirely just as to preclude all exception: the more so, when its payment, added to the like payment to him, will still leave the United States a gainer, compared with commissions that must have been paid for similar services to mercantile or banking houses in London, whose position would have indicated them as proper to be called upon in a pecuniary trust of this magnitude and delicacy; for the fund was too precious to the future interests of science and humanity to have been exposed to an instant's risk in a single pound sterling of its value, by committing it to doubtful, or any other than the safest and purest hands; which would have called for commissions regulated by that standard. It was not a concern to have been hawked for a low bid.

When I returned from London with the *whole fund in gold coin*,\* *which, by the good sales of the stock, exceeded the value of the bequest when the testator made his will*, and stocks have not been as high in London since, there was a balance of the appropriation made by Congress to meet the expenses of the agency remaining in the hands of the United States bankers in London, subject to my draft, sufficient to cover the claim I make; showing, if in this connexion the remark may be permitted, that the business was terminated sooner than Congress had anticipated.

I made known by letter and otherwise to Mr. Forsyth, immediately upon my return, (viz: in September, 1838,) my intention of making this claim, and supposed that the above balance would be at the disposal of the Executive for payment of it, though I forwarded no formal or official statement of my account at that time or since. He replied, under date of the 20th of November following, that the President considered that the

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\*My Nos. 25 and 26 will show why I decided to bring it home in gold rather than paper.

claim must go before Congress, his letter not gainsaying the value of my services, or that they were extra.

I forbore to pursue it then, under a belief derived from Mr. Forsyth, on first reparing to Washington, that if allowed, unless I got it from the balance in question, it would diminish, by so much, the Smithsonian fund; rather than which I would have continued to forbear. The then Attorney General subsequently gave a different opinion, viz: that all the expenses connected with the agency in any way, from first to last, were to be borne by the United States; on which footing it stands at present.

The justice of my claim remains the same, in any event, and the return of Mr. Stevenson, late minister to England, forms the appropriate time for presenting it in the manner I now have the honor to do; forwarding it to your hands, to whose Department I was responsible, not doubting but that you will have the goodness to lay it before the President, and otherwise deal with it as justice to me, on the one hand, as to the Government on the other, may dictate.

Mr. Stevenson was in London when I arrived there to assume the agency. To his good offices I was commended by a public despatch from your Department, dated the 27th of July, 1836. These he accorded to me zealously and beneficially, whenever needed. He was fully and officially cognizant of my commission and instructions, and whole course in the agency; and I now enclose a letter from him upon the subject, dated the 12th of this month, in reply to one I addressed to him, a copy of which is also enclosed. He states, as will be seen, among other things, that he well knows what I did beyond my instructions; that I was long and laboriously engaged in the work of doing so, and saved money to the public. He also allows me the liberty of referring you to him for any further explanations that may be desired, either in person or by letter. I had the expectation that he would have been in Washington during the present month, but a severe illness has prevented it.

Seven hundred and ninety-seven pounds fifteen shillings and sixpence was the sum allowed Colonel Aspinwall, as three quarters of one per cent. on 104,960 sovereigns; but I have put down my charge at £786 15s., not making this fractional per centage more, and inferring that there was a slight error of calculation in his case.

The precise amount of funds I recovered for the United States, and received in hand for them in money after selling all the stock, with some fractional sums added, was £105,649 6s.; but I have charged my commission on the same reduced basis as Colonel Aspinwall's.

I have the honor to remain, with great respect, your obedient servant,  
 RICHARD RUSH.

Hon. DANIEL WEBSTER,  
*Secretary of State.*

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UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

*To all to whom these presents shall come, greeting:*

I certify that the document hereunto annexed is a true copy of an origi-

nal letter from A. Stevenson to R. Rush, dated the 12th February, 1842, now on file in this Department.

In testimony whereof, I, Fletcher Webster, acting Secretary of State, of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed. Done at the [L. S.] city of Washington, this twenty-first day of May, A. D., 1842, and of the independence of the United States of America the sixty-sixth.

FLETCHER WEBSTER,  
*Acting Secretary.*

RICHMOND, *February 12, 1842.*

DEAR SIR: Your letter of the 2d instant, addressed to me at this place, was received during a severe spell of illness, which has confined me to my room for the last 17 days, and rendered me incapable of attending to business. This must be my apology for delaying so long to answer your letter, which I am even now forced to do by an amanuensis. You ask me to state what I know in relation to your *London agency of the Smithsonian legacy*. This I proceed to do with the greatest pleasure. I was the minister of the United States at the British court during the entire period of your agency, and had the best opportunities of witnessing the proceedings which took place, and the important services rendered by you, from first to last. Indeed, you consulted me, both officially and individually, whenever necessary, and I zealously co-operated with you. Knowing well the nature and extent of your commission and instructions, and what you did under and *beyond them*, I feel no hesitation in declaring my opinion that no agency of the sort could have been more judiciously managed, either as to the period in which the recovery was made, or the favorable manner in which it was consummated. A more able, zealous, and indefatigable agent, I never saw; and to your exertions and judicious management is mainly to be attributed, in my opinion, the favorable result obtained. This opinion I have often expressed, both in England and since my return to the United States. That you are justly entitled to the additional compensation you now claim, in *transmuting the stocks* into specie, I most sincerely believe. You were long and laboriously engaged in the work; and, even after allowing the amount paid to Colonel Aspinwall, as your assistant, and that now claimed by you, you doubtless saved money to the fund. If you had placed the whole matter, as you might properly have done, in the hands of a London stock broker, it would have cost, doubtless, from an half to one per cent. more. I shall be happy to give any further explanation you may desire to the Secretary of State, either in person or by letter.

I am, dear sir, very respectfully and truly, your friend and obedient servant,

A. STEVENSON.

RICHARD RUSH, Esq., *Sydenham, near Philadelphia.*

CONSULATE OF THE UNITED STATES,  
*London, March 3, 1842.*

MY DEAR SIR: I have the pleasure of acknowledging your letter of the 28th of last January, which came to hand on the 18th of last month by the royal mail steamer, and I am most happy to bear my feeble testimony to the extraordinary value of your services, in recovering and transmitting to the United the Smithson bequest.

With respect to your management of the chancery proceedings, I am fully warranted, by my personal knowledge in part, but mainly by information derived from professional and other individuals, in affirming that no litigant ever displayed a more ardent zeal, or a more sagacious, devoted, and unremitting diligence, in the prosecution of his private suit than you did in urging on this public one to a prompt and successful conclusion. The despatch with which, in consequence, this purpose was finally accomplished by you is, I believe, almost without example in the annals of chancery. Your solicitors, I am sure, will long remember your adroit and unsparing application of the spur. Had you not urged them to the top of their speed, you would have had a lighter weight of gold to carry home with you at a later day. The suit might and probably would have been prolonged for two years, or even to this time, had you been content with an ordinary chancery pace, in either of which events the sale of the stocks would not have yielded so much as you obtained by £11,000, or, at the exchange of the day, the price of gold in the United States, \$53,500. Such has been the decline of prices—a decline beginning almost from the very period at which your sales were completed, in July, 1838.

When the various stocks comprised in Smithson's bequest were transferred by order of the Lord Chancellor into your name, your mission, I believe, was virtually ended, had you chosen to consider it so, and you were authorized, as well as recommended, to relieve yourself from any further trouble by transferring the whole over to the bankers of the United States; but you resolved to place the property in no hands but those of the Government at home, and to take it there in gold, without suffering its amount to be diminished by the usual commissions, or any expense which it was possible to avoid.

In pursuance of this resolution, when you charged me with the execution of the practical details of such arrangements for sales and transfers of stocks, procuring shipping, and insuring of specie, &c., you kept the property fast in your own possession, and every operation under your absolute control. No suggestion of mine was adopted by you until it had been deliberately canvassed and subjected to a thorough, searching, and frequently reiterated investigation. No step was taken without your actual concurrence and express sanction. The transfers of stock were all made, not for checks, but for money down, and this money you never parted with until after the Bank of England had been notified to deliver, for shipment, the required amount of gold, and even then merely for the purpose of being carried at the instant it was wanted in thousand-pound notes from Lombard street to the bank, a distance of one hundred yards.

During the months of May, June, and July, 1838, all these plans and operations constituted the engrossing object of a close and unwearied attention on your part. Although you then resided at a distance of three



miles from my office, you came daily, and often twice or three times in the day, to advise and consult with me on the business, or to superintend and further its progress; and, lest any thing should go wrong, you wrote me at night or in the morning, and not seldom at both periods, to explain and enforce the substance of your conversation, or to make some new suggestion or inquiry. It was not a time of peace and quietness for me; and, although the amount of compensation you allowed me was a great boon to one who had not had any thing like it for twenty years, yet I was, at times, heartily sorry that I had enlisted in the cause.

You may remember how strenuously I maintained my title to the full ordinary mercantile commission for my services in this matter, on the ground, first, that I had originally, so far back as the year 1829, been the means of bringing the Smithson bequest to the knowledge of the Government, and, secondly, that you ought to have less scruple in allowing me that rate of commission because you were authorized, and had been specially recommended, to place the business in the hands of the bankers of the United States, who would have charged it as a matter of course.

You thought it patriotic to decide otherwise, and, by your inflexibility, made a saving to the fund of from one and a quarter to one and three quarters per cent. on the amount, or, in round numbers, from about \$6,400 to \$8,700 in addition to what I have stated above. In all you enriched the fund \$60,000.

The foregoing is, I believe, a true and faithful account of the whole matter.

I remain, my dear sir, very truly and respectfully, yours,

THOS. ASPINWALL.

Hon. RICHARD RUSH, &c.

DEPARTMENT OF STATE,

*Washington, March 17, 1842.*

SIR: I have received your letter of the 19th ultimo, enclosing an account for services rendered, in relation to the Smithsonian fund, over and above those required by the act of Congress of the 1st July, 1836, creating the agency for its recovery. In reply I can only state that, however just the claim may be, there is not any appropriation from which it can be paid; nor does any law give this Department any authority in the case. Under these circumstances, an application to Congress appears to be the only mode of obtaining its allowance. Should you decide upon adopting that mode, I will, with pleasure, contribute to its success, by supplying any information on the subject that is in this Department which may be considered necessary or useful.

The account is returned to you herewith, and, should you desire it, your letter, or a copy of it, will be transmitted to you.

I am, sir, your obedient servant,

DANIEL WEBSTER.

RICHARD RUSH, Esq.,

*Sydenham, near Philadelphia.*

*The United States to Richard Rush, Dr.*

To services performed in London in May, June, and July, 1838, as agent of the United States for recovering the Smithsonian legacy, under the act of Congress of the 1st of July, 1836, viz :

Taking into his own hands the public stocks of England, in which the said legacy, when he recovered it from the English court of chancery, was invested, consisting of £64,535 18s. 9d. in consols, £12,000 in reduced three per cent. annuities, and £16,000 in bank stock of the Bank of England, and selling it all at different times, in different portions, and under different contracts, for a sum which, including some dividends of interest and other fractional sums, amounted, in the whole, to £105,649 6s.;

And, also, taking all other steps necessary for converting the whole aforesaid amount of stock, after it had been made to yield the best proceeds in money under his sales, (together with other fractional sums recovered by him from the court, but not standing in stock,) into gold coin, and shipping the same, including insurance effected at five principal insurance offices, and with thirty-two private underwriters, and all other steps belonging to the verification, entry, and clearance, at the London custom-house, of the said gold coin, in sovereigns, for due and regular shipment and transportation to the United States, where it arrived in safety; a commission of three quarters of one per cent. on the sum of £104,960, being the proceeds of the Smithsonian fund, deducting premiums of insurance, charges, and expenses obliged to be paid before shipment in London: the said commission amounting to £786 15s.

E. E.

RICHARD RUSH,

*Sydenham, near Philadelphia.*

MARCH 25, 1842.



